IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MARION COUNTY

ADAM EUGENE KOBS, an individual, and **N.K.,** a minor, by and through his father and natural guardian, ADAM E. KOBS**,** *Plaintiffs,* v. **SILVERTON SHELTERING SERVICES** d.b.a. **"SHELTERING SILVERTON,"** an Oregon public-benefit nonprofit corporation; **SARAH WHITE**, individually; **JOSEPH SCHMAUS**, individually; *Defendants.*	Case No. 25CV57849 PLAINTIFF'S SUPPLEMENTAL MEMORANDUM DOCUMENTING COORDINATED PROCEDURAL MISCONDUCT IN SUPPORT OF MOTION FOR SANCTIONS

I. INTRODUCTION

Plaintiff Adam Kobs submits this Supplemental Memorandum to bring to the Court's attention a coordinated pattern of procedural misconduct by defense counsel Guy Keating, Tyler Honn, and their client, Defendant Sarah White and Sheltering Silverton. This misconduct, spanning from receipt of Plaintiff's Tort Claim Notice on October 6, 2025, through the present, reveals a deliberate strategy: misinterpret and misapply the Oregon Rules of Civil Procedure to create confusion, evade compliance with court orders, and shield from scrutiny the individual who controlled the destroyed evidence.

Defense counsel has consistently operated under interpretations of the rules that are **contrary to the rules' text**—interpretations that do not exist in the ORCP, that contradict controlling case law, and that selectively apply only when they benefit the defense. When

challenged, counsel abandons these arguments without response, leaving Plaintiff and the Court to decipher what is real and what is misdirection. This pleading exposes those tactics, sets the record straight, and requests that the Court view the pending Motion for Sanctions through the lens of this established pattern.

Plaintiff apologizes to the Court for the volume of filings that have been required. This is not an attempt to overwhelm the docket or generate confusion. Rather, it has taken substantial time and research to reverse-engineer and unravel the tactical maneuvers defense counsel has embedded. This narrative pleading is offered to **add clarity, not further disconnection**—to connect the full sequence of events into a single, coherent picture so the Court may see the pattern in its entirety.

II. THE FOUNDATION: DUTY TO PRESERVE ATTACHED OCTOBER 6, 2025

On October 6, 2025, Plaintiff served his Tort Claim Notice on Sheltering Silverton via certified mail. The notice was delivered and signed for at 2:35 PM. (Exhibit E, Opposition to Motion to Dissolve). The notice included an explicit, written demand to preserve all evidence, including video footage. Under Oregon law, this triggered the duty to preserve. *Markstrom v. Guard Publishing*, 294 Or App 338 (2018) (duty to preserve arises when litigation is reasonably anticipated).

On October 10, 2025, defense counsel Guy Keating entered his appearance, acknowledging receipt of the Tort Claim Notice. (Exhibit A, Plaintiff's Notice of Filing October 10, 2025 Counsel Appearance). From that moment forward, the shelter and its counsel were on notice of their obligations.

Despite this, the shelter took no steps to preserve evidence. By their own admission, the CCTV system continued operating on its routine deletion cycle, and footage was lost.

III. THE PRESERVATION ORDER AND THE INITIAL FALSE STATEMENTS

On December 5, 2025, the Court signed Plaintiff's Ex Parte Motion for Preservation of CCTV and ESI (the "Preservation Order"). The Order required, among other things, that the

shelter file a sworn technical declaration describing its CCTV system within 14 days (by December 19, 2025).

On December 6, 2025, Plaintiff served the signed Preservation Order on defense counsel via email. (Exhibit C, Opposition to Motion to Dissolve). On December 11, 2025, Plaintiff filed a Proof of Service confirming this service. (Exhibit F, Opposition to Motion to Dissolve). Despite this, on December 17, 2025, Defendants filed a **"Motion to Dissolve or Modify Preservation Order"** supported by two declarations containing materially false statements:

- **Declaration of Guy Keating (Dec 17, 2025):** Counsel declared under penalty of perjury: (1) "I was never served by plaintiff with the Preservation Order," and (2) "Plaintiff has never attempted to confer with me about the Preservation Order."
- **Declaration of Sarah White (Dec 17, 2025):** Defendant White declared she and Sheltering Silverton were never served with the Order.

Both statements were demonstrably false. Plaintiff had served Keating by email on December 6, 2025—eleven days before Keating signed his declaration. Plaintiff had filed Proof of Service on December 11, 2025—six days before. The Court's own docket reflected this.

IV. THE ORCP 79 MISINTERPRETATION: ARGUMENTS CONTRARY TO THE RULE'S TEXT

Defense counsel's motion to dissolve relied heavily on a misreading of **ORCP 79** to manufacture a procedural defect that does not exist. This misreading was not an innocent error—it was a calculated attempt to retrofit false statements.

A. Keating's Argument

In the Amended Motion to Dissolve, Keating argues that under ORCP 79 B(1)(b), Plaintiff was required to notify him of the "application" (the motion and proposed order) **before** filing, and to explain why notice should not be required. Because Plaintiff did not

serve these documents pre-filing, Keating contends the ex parte order is invalid, and his statements about non-service and lack of conferral were therefore not false in the context of this procedural requirement.

B. The Actual Text of ORCP 79 B(1)

ORCP 79 B(1) provides in full:

"A temporary restraining order may be granted without written or oral notice to the adverse party or the adverse party's attorney only if: (a) it appears from specific facts shown by an affidavit, a declaration, or a verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or the adverse party's attorney can be heard in opposition; and (b) the applicant's attorney certifies to the court in writing any efforts that have been made to give the notice, or the reasons supporting the claim that notice should not be required."

Notice to the adverse party is the *exception*, not the rule, for ex parte TROs. The rule does **not** require service of the motion before filing. It requires the applicant to tell the court *why* they are not serving it and to describe any efforts made, "if any."

Plaintiff's original ORCP 79 certification (October 27, 2025) stated:

"I certify that immediate and irreparable injury will result before the adverse party can be heard in opposition because the Shelter's CCTV/ESI is subject to routine deletion/overwriting and loss may occur at any time. Efforts to provide advance notice would risk further loss through ordinary system operations."

This satisfies both ORCP 79 B(1)(a) and (b). Judge Wren agreed and signed the order.

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C. Conferral Was Never Required—And Keating's Declarations Are Factually False

Keating's second declaration statement—that "Plaintiff has never attempted to confer with me about the Preservation Order"—is equally false and, more importantly, **legally irrelevant to the validity of an ex parte order.**

ORCP 79 does not require conferral before filing an ex parte motion. The entire purpose of ex parte relief is to address situations where conferral would defeat the purpose of the relief sought. If Plaintiff had been required to confer with Keating before seeking preservation, he would have been required to give advance notice that evidence was at risk of deletion. That advance notice would have allowed the automatic deletion process to continue unchecked during the conferral period, rendering the preservation order meaningless.

The rule contemplates this exact scenario. ORCP 79 B(1)(b) requires the applicant to describe "the efforts, if any, which have been made to notify the adverse party or the adverse party's attorney of the application, and the reasons supporting the claim that notice should not be required." Plaintiff's certification explicitly stated that efforts to provide advance notice "would risk further loss through ordinary system operations." This satisfies the rule's requirement and explains precisely why conferral was not attempted pre-filing.

The rule does not require, and never has required, a pre-filing meet-and-confer for ex parte applications. Keating's declaration that "Plaintiff has never attempted to confer with me about the Preservation Order" is factually false—Plaintiff conferred on December 18, 2025, regarding the false statements and the need for correction. But more fundamentally, the statement is legally meaningless because **no conferral was required before filing.** Keating cannot manufacture a procedural violation where none exists, then use that manufactured violation to justify false statements in a sworn declaration.

D. Conclusion: The Motion to Dissolve on This Ground Should Be Denied

The validity of service after entry—and Plaintiff's prompt service of the signed order on December 6, 2025—defeats any claim that the order is void for lack of pre-filing notice or conferral. The service and conferral timeline also undercuts the truthfulness of the non-service statements and supports ORCP 17 sanctions.

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E. Keating's "Not a TRO" Argument: A Fundamental Misreading

In the Amended Motion to Dissolve, Keating argues that the Preservation Order "is neither" a temporary restraining order nor a preliminary injunction, and therefore ORCP 79 does not apply at all. This argument is directly contradicted by the rule itself.

ORCP 79 A defines "temporary restraining order" and "preliminary injunction" broadly:

"A temporary restraining order or preliminary injunction is any order or mandate, made in a proceeding of which an appeal may be taken to the Court of Appeals, commanding a party to refrain from doing a particular act or to do a particular act, including but not limited to an order under ORCP 78."

The Preservation Order commands the shelter to:

- Immediately suspend deletion/overwriting
- Preserve specified categories of evidence
- File a sworn technical declaration
- Meet and confer on an ESI protocol

This is **literally** an order "commanding a party to refrain from doing a particular act" (deleting) and "to do a particular act" (file a declaration, meet and confer). It is a TRO by any reasonable reading. The fact that it is labeled "Preservation Order" does not change its nature. Courts routinely issue preservation orders under ORCP 79 and their inherent authority to prevent spoliation. *See Markstrom v. Guard Publishing*, 294 Or App 338 (2018).

Keating's argument that ORCP 79 does not apply is not supported by the text of the rule, by Oregon case law, or by logic. It is a manufactured procedural objection designed to create confusion where none exists.

F. Plaintiff's Amended ORCP 79 Certification (January 5, 2026)

To eliminate any conceivable ambiguity, Plaintiff filed an Amended ORCP 79 Certification documenting all efforts to notify:

- Tort Claim Notice served October 6, 2025
- Keating's appearance October 10, 2025
- Pre-suit correspondence (October 17, 21, 23)
- July 28, 2025 preservation request to shelter staff

This establishes that the shelter and its counsel had **actual knowledge** of the duty to preserve **months before** the Preservation Order was signed. The Amended Certification cures any technical deficiency that may have existed—and Keating's motion to dissolve, filed December 17, 2025, predates this cure, meaning his arguments were moot before they were even fully briefed.

V. THE IMPROPERLY FILED AMENDED MOTION AND DECLARATIONS

On December 23, 2025, after Plaintiff had already filed his Opposition to the Motion to Dissolve (December 18, 2025), Defendants filed **"Amended"** versions of:

- The Motion to Dissolve
- The Declaration of Guy Keating
- The Declaration of Sarah White

These filings were made without leave of court and without Plaintiff's consent, after a responsive pleading had been filed. ORCP 23 A.

A. The Procedural Posture

Plaintiff's Opposition to the Motion to Dissolve, filed December 18, 2025, was a responsive pleading. Under ordinary procedural rules, once a responsive pleading is filed, a party may not amend as of right. The December 23 "Amended" filings were therefore procedurally irregular. ORCP 23 A.

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B. Prejudice to Plaintiff

These late-filed amendments caused prejudice to Plaintiff by:

1. Presenting new arguments after Plaintiff's Opposition was already on file
2. Requiring Plaintiff to address shifting positions
3. Creating confusion about which versions of the motion and declarations were operative
4. Wasting judicial and party resources

C. Requested Relief

Plaintiff respectfully requests that the Court:

1. **STRIKE** Defendants' December 23, 2025 Amended Motion to Dissolve and supporting amended declarations as improperly filed without leave of court after a responsive pleading; or in the alternative
2. **DISREGARD** these late-filed amendments and treat the original December 17, 2025 filings as the operative versions; or in the alternative
3. **GRANT** Plaintiff leave to file a sur-reply addressing any new arguments first raised in the amended motion.

VI. THE ORCP 36 C(1) MISINTERPRETATION: NO AUTOMATIC STAY

In the Amended Motion to Dissolve, Keating invokes **ORCP 36 C(1)** to argue that discovery should be stayed pending resolution of the Motion to Dismiss. He writes:

"Pursuant to ORCP 36 C(1), defendant should not be required to undergo burdensome discovery for a case that may not survive a motion to dismiss."

A. The Actual Text of ORCP 36 C(1)

ORCP 36 C(1) provides in full:

"Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order which justice requires to

protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (a) that the discovery not be had; (b) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (c) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (d) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (e) that discovery be conducted with no one present except persons designated by the court; (f) that a deposition after being sealed be opened only by order of the court; (g) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (h) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court."

B. This Is a Discretionary Protective Provision, Not an Automatic Stay

The rule does not mention motions to dismiss. It does not create a blanket exemption from compliance with a court order simply because a dispositive motion is pending. It requires:

1. A motion by a party
2. A showing of good cause
3. A discretionary determination by the court

Defendants filed no protective order motion under ORCP 36 C. They simply asserted the rule as if it automatically suspends their obligations. This is not supported by the rule's language.

C. The Preservation Order Is Not "Discovery"

Moreover, the Preservation Order is not "discovery." It is a **preservation order**. It does not require production of documents. It requires:

- Suspending deletion
- Filing a sworn technical declaration
- Meeting and conferring on an ESI protocol

These are affirmative obligations, not discovery requests. ORCP 36 C(1) does not apply to compliance with a court order.

D. Conclusion: No Automatic Stay Applies

No protective order was sought. No good cause was shown. The Preservation Order remains in full force and effect. Compliance is required unless and until modified by the Court.

VII. THE SELECTIVE APPLICATION OF RULES: INTERPRETATIONS CONTRARY TO THE TEXT

The overarching theme of defense counsel's strategy is now clear: **Keating applies the ORCP rules exactly as they would benefit the defense, not as they are actually written.** This is not advocacy that serves the interests of justice.

A. How Keating's Strategy Works

1. **He misreads ORCP 79** to create a non-existent pre-filing service and conferral requirement, then stands behind his original declarations because, in his self-created interpretation, they remain true.
2. **He misreads ORCP 36 C(1)** as an automatic stay, then argues compliance with a court order is not required pending resolution of a motion to dismiss—a reading not supported by the rule's text.
3. **He files amended pleadings without leave** after a responsive pleading has been filed, causing prejudice and confusion.
4. **He invokes rules in conferral emails** with sharp, definitive tones, but when challenged to provide the actual rule citation, he falls silent—revealing that the "rule" existed only in his rhetoric.

B. The Consequence: Arguments Not Supported by the Rules

Because Keating has constructed his own interpretation of the rules, he feels no compulsion to correct his declarations. In his constructed interpretation:

- He was never served (because service *should have* occurred pre-filing).

- Conferral never happened (because conferral *should have* occurred pre-filing).
- The Preservation Order is invalid (because it is "neither a TRO nor a preliminary injunction").

These interpretations are not supported by the rules' language. They are a lawyer's attempt to litigate under standards that do not exist.

C. The Standard: Reasonable Inquiry, Not Subjective Belief

ORCP 17 does not permit a lawyer to define his own reality. It requires "an inquiry reasonable under the circumstances" before making factual representations to the court. Keating had the December 6 service email in his inbox. He had the December 18 conferral email in his sent folder. A reasonable inquiry would have revealed the falsity of his statements. He made none.

As a seasoned attorney with a bar license, Keating should be held strictly accountable for misreading and selective applications of the ORCP that benefit himself and his client. This is the fundamental obligation of every officer of the court: to read the rules as they are written, not as he wishes them to be.

VIII. THE DMITRY CONNECTION: EXPLAINING THE IRRATIONAL RESISTANCE

The defense's otherwise inexplicable refusal to file a simple technical declaration is now clear: **compliance would require disclosure of information they wish to keep from the record.**

A. Basis for Plaintiff's Belief

During Plaintiff's tenure as a resident at Sheltering Silverton (October 2023 to September 2024) and during subsequent visits, Plaintiff directly witnessed and overheard that Dmitry White, husband of Defendant Sarah White, served as the shelter's active IT consultant. He was the person responsible for managing the shelter's data systems, including the CCTV network. The shelter has never denied this.

B. Public Record Corroboration

The 2018 newspaper article held by "*Our Town"* Silverton profile—published with the shelter's cooperation—publicly identifies Dmitry White as the shelter's volunteer IT consultant who "covers for her all the time," "maintains the website and helps process data." This document is a matter of public record.

C. The Inference That Follows From Non-Compliance

Sarah White's sworn declarations describe the CCTV system but omit any mention of who controls it. The court-ordered technical declaration would require identification of the system custodian. The defense's refusal to file this declaration, their resistance to the Preservation Order, and their coordinated procedural maneuvers all serve one purpose: **avoiding disclosure of who controlled the system and what happened to the evidence.**

This is not an accusation of criminal conduct. It is an observation that the defense's conduct—their refusal to comply with a simple court order—creates a reasonable inference that compliance would reveal information damaging to their position. The Court is entitled to draw such inferences when a party obstructs discovery and defies court orders. If the declaration is filed, Plaintiff can confirm or rebut these inferences with specific evidence.

Dmitry White was not named as a defendant in the Second Amended Complaint because his role as system custodian—and the questions surrounding his involvement—only became apparent through the defense's refusal to file the required declaration. This could not have been foreseen at the time of pleading. No party is being added. Mr. White's appearance in this litigation arises solely from the silence surrounding his role.

IX. THE "RELEVANCE" ARGUMENT: A CIRCULAR DEFENSE

Defense counsel's anticipated argument at oral hearing is: *"Even if the duty attached October 6, the footage lost after that date is irrelevant to Plaintiff's claims, which concern 2024. Therefore, no adverse inference is warranted."*

This argument fails on multiple grounds.

A. The Duty to Preserve Is Not Retroactive—It Is Prospective

The duty to preserve requires a party to **suspend routine destruction** of all potentially relevant evidence once litigation is reasonably anticipated. *Markstrom v. Guard Publishing*, 294 Or App 338 (2018). The question is not whether the lost footage contains images of the 2024 incidents. The question is whether the defense **took reasonable steps** to preserve evidence after October 6. They admit they did not. They let their system keep deleting.

Adverse inference is not about what was lost. It is about the **culpable state of mind** that caused the loss. *Olson v. Grant Cnty.*, No. 2:20-cv-01342-IM (D. Or. Mar. 15, 2022) (adverse inference appropriate where party knew of litigation and chose not to alter storage settings).

B. They Cannot Prove Irrelevance Because They Destroyed the Evidence

The defense argues the lost footage is "irrelevant" because Plaintiff's claims are about 2024. But they have no idea what was on that footage. Neither does Plaintiff. Neither does the Court. **That is the point of spoliation.** They destroyed the very evidence that would have shown what happened after October 6. And now they want to benefit from that destruction by claiming "it wasn't important anyway."

This is circular. They cannot use their own misconduct to create a factual void and then fill it with self-serving speculation. *Markstrom*, 294 Or App at 348 (spoliation sanctions appropriate when party's conduct deprives opponent of evidence needed to prove claim).

C. The Order Required a Declaration—Not Just Preservation

Paragraph 2 of the Preservation Order required a **sworn technical declaration** describing the system, retention settings, and any deletions since July 28, 2025. This declaration would have revealed:

- Whether the shelter had a cloud subscription during the relevant period
- What the actual retention settings were
- Whether anyone logged in after October 6
- Whether manual deletions occurred
- Who controlled the system

If the footage is truly irrelevant, why refuse to file a declaration that would prove it? The only logical inference is that the declaration would reveal something damaging.

D. The Eufy Evidence Proves the Declaration Is Relevant

Plaintiff's February 12, 2026 inquiry to Eufy, the system manufacturer, yielded three critical confirmations:

1. **No Recovery:** Cloud footage is permanently deleted after 30 days and cannot be recovered by anyone, including Eufy.
2. **Account History Available:** Eufy maintains backend logs showing subscription status, plan type, and storage method for past periods, which can be provided to the account holder.
3. **No Deletion Logs:** Eufy does not maintain timestamps for when files are deleted.

This evidence proves:

- If the shelter had a cloud subscription in October 2025, any footage from that period was not "automatically deleted"—it was **never preserved** during the 30-day window when it could have been saved. This is negligent spoliation.
- If the shelter had no cloud subscription, then **no cloud footage ever existed**. The footage was stored locally, under the control of the shelter's IT consultant.
- The declaration is essential to determine which scenario occurred.

X. THE PATTERN OF DECEPTIVE CONFERRAL

Plaintiff incorporates by reference the communication log previously filed as Exhibit A to Plaintiff's Reply in Support of Motion for Sanctions (January 15, 2026). That log demonstrates a consistent pattern:

- When Plaintiff sends substantive emails (settlement proposals, discovery requests, conferral attempts), defense counsel either ignores them or responds with a blanket objection citing a definitive "rule-based" argument with a sharp tone.

- When Plaintiff challenges that argument and requests the specific rule citation, defense counsel provides no response and the issue is dropped.
- When Plaintiff sends purely procedural emails that benefit the defense (e.g., confirming receipt), counsel responds promptly.

This pattern is further evidence of counsel's selective application of court rules—invoking them when they can be used to confuse or intimidate, abandoning them when challenged, and ignoring them entirely when compliance is required.

The Court's rules apply equally to all parties. Defense counsel cannot be permitted to operate under a double standard.

XI. PLAINTIFF'S GOOD FAITH: THE NOTICE OF ERRATUM

On January 15, 2026, Plaintiff filed a **Notice of Erratum for Sanctions Motion**, correcting a citation error in the original sanctions motion. The original motion cited *Federated Mut. Ins. Co. v. Anderson*, 108 Or App 293 (1991). The Notice corrected the citation to the controlling Oregon Court of Appeals decision: ***Markstrom v. Guard Publishing*, 294 Or App 338 (2018)** .

Strategic Significance:

1. **Demonstrates Diligence:** Plaintiff proactively corrected a minor citation error before the defense could exploit it. This stands in stark contrast to defense counsel's refusal to correct **material factual false statements** after being given 21 days' notice under ORCP 17's safe harbor.
2. **Moots Defense's "AI Hallucination" Claim:** In their Response to Sanctions (January 13, 2026), defense dismissed Plaintiff's *Federated* citation as an AI "hallucination." Two days later, Plaintiff filed the Notice of Erratum, replacing it with *Markstrom*—a real, binding case. The defense cannot now claim Plaintiff relied on phantom authority.

3. **Establishes Correct Legal Standard:** *Markstrom* confirms that (a) the duty to preserve arises when litigation is reasonably anticipated, and (b) spoliation sanctions are available under ORCP 46 B.

Plaintiff's good faith stands in stark contrast to defense counsel's intransigence.

XII. THE SAFE HARBOR: EXPIRED AND UNUSED

Plaintiff served the Motion for Sanctions on December 30, 2025, triggering the 21-day safe harbor under ORCP 17 D(3). Defendants had until January 20, 2026, to correct the false statements. They did not.

- They did not amend Keating's declaration.
- They did not withdraw the false statements.
- They did not apologize or explain.

Instead, on January 13, 2026, they filed a Response arguing that Keating "meant" something different—a post-hoc reinterpretation that does not change the fact that the statements were false when made.

A. The Text of ORCP 17 D(3)

ORCP 17 D(3) provides:

"If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney fees incurred in presenting or opposing the motion. In determining what sanctions, if any, are appropriate, the court shall consider whether the party or attorney violating this section has withdrawn or corrected the contention after an oral or written request or pursuant to the notice provisions of subsection D(2) of this rule."

B. Sanctions Under ORCP 17 Do Not Require a "Guilty Mind"

Sanctions under ORCP 17 require:

1. A false certification
2. Made without reasonable inquiry
3. After notice and opportunity to respond

All three elements are met. The statements were false. A reasonable inquiry would have revealed the December 6 service email and the December 11 Proof of Service. Plaintiff provided notice under the safe harbor. Defendants did not correct within 21 days.

C. Conclusion: ORCP 17 Sanctions Are Warranted

The Court should enter ORCP 17 findings and award Plaintiff his reasonable expenses, including costs incurred in pursuing sanctions.

XIII. ISSUES THE COURT CAN RULE ON NOW

Issue 1: Was pre-filing notice/conferral required before the ex parte preservation order?

Rule: ORCP 79 B(1) authorizes ex parte relief upon a specific certification showing immediate and irreparable harm if notice is given, and requires the applicant to state efforts to notify, "if any," and why notice should not be required.

Application: Plaintiff's certification explained imminent loss due to routine overwriting and why pre-filing notice would risk further loss. This fits the textual mechanism of ex parte relief. The validity of service after entry—and Plaintiff's prompt service of the signed order on December 6, 2025—defeats any claim that the order is void for lack of pre-filing notice or conferral.

Conclusion: The motion to dissolve on this ground should be denied. The service and conferral timeline also undercuts the truthfulness of the non-service statements and supports ORCP 17 sanctions.

Issue 2: Is there an automatic discovery stay under ORCP 36 C(1)?

Rule: ORCP 36 C(1) is a discretionary protective-order provision, requiring a motion and good cause; it does not create an automatic stay based on a pending motion to dismiss.

Application: No protective-order motion was filed. The Preservation Order imposes preservation and disclosure obligations (suspend deletion, technical declaration, ESI meet-and-confer), not production on discovery requests. Noncompliance violates the Court's order.
Conclusion: No automatic stay applies. Compliance is required unless and until modified by the Court.

Issue 3: Are sanctions warranted for false sworn statements and failure to correct after safe harbor?
Rule: ORCP 17 D(3) authorizes sanctions where a certification was made without reasonable inquiry and not withdrawn or corrected within the safe harbor.
Application: The statements denying service and conferral were contradicted by the email service on December 6 and the docketed Proof of Service on December 11, and by Plaintiff's December 18 conferral. They were not corrected within the safe harbor. The later attempt to "re-interpret" does not cure falsity "when made."
Conclusion: The Court should enter ORCP 17 findings and award fees/expenses on the sanctions motion, compel the overdue technical declaration, and impose spoliation remedies if warranted after compliance or hearing.

Issue 4: Adverse-inference remedy for spoliation following duty to preserve
Rule: The Court may impose remedial sanctions (including adverse-inference instructions) when a party fails to take reasonable steps to preserve ESI/evidence after the duty to preserve arises and the loss prejudices the opponent.
Application: The duty attached at notice. The record reflects continued overwriting and the refusal to supply the technical declaration needed to assess retention settings, access, and subscription status. The Eufy vendor facts (no recovery after 30 days; account history available to the account holder; no deletion logs) make the technical declaration outcome-determinative for culpability and remedy.
Conclusion: The Court should compel the declaration. If noncompliance persists, or if the declaration confirms culpable loss, the Court should impose an adverse-inference instruction tailored to the period after notice.

XIV. CONCLUSION AND REQUEST FOR RELIEF

The record now before the Court reveals a coordinated strategy by defense counsel:

- **Misinterpreting ORCP 79** to manufacture a procedural defect that does not exist—including a non-existent pre-filing conferral requirement
- **Misrepresenting the nature of a TRO** to argue the Preservation Order falls outside ORCP 79 entirely
- **Filing amended pleadings without leave** after a responsive pleading, causing prejudice and confusion
- **Misrepresenting ORCP 36 C(1)** as an automatic stay—a reading not supported by the rule's text
- **Making false factual statements** in sworn declarations and refusing to correct them after safe harbor notice
- **Shielding from scrutiny** the individual who controlled the destroyed evidence
- **Engaging in selective conferral** that invokes rules only when convenient
- **Relying on procedural smokescreens** to avoid compliance with a court order

This is not zealous advocacy. It is a calculated effort to litigate under interpretations of the rules that are contrary to the rules' text. As a licensed attorney, Keating must be held to the actual text of the Oregon Rules of Civil Procedure, not his self-serving reinterpretation of them. Plaintiff respectfully requests that the Court:

1. **STRIKE** Defendants' December 23, 2025 Amended Motion to Dissolve and supporting amended declarations as improperly filed without leave after a responsive pleading; or in the alternative, **DISREGARD** these late-filed amendments and treat the original December 17, 2025 filings as operative; or in the alternative, **GRANT** Plaintiff leave to file a sur-reply;
2. **DENY** Defendants' Motion to Dissolve the Preservation Order;
3. **ORDER** Defendants to file the sworn technical declaration required by Paragraph 2 of the Preservation Order within seven (7) days;

4. **IMPOSE** an adverse inference instruction at trial regarding the spoliation of evidence;
5. **AWARD** Plaintiff his reasonable expenses, including costs (if any) incurred in pursuing sanctions;
6. **REFER**, in the Court's discretion, the matter to the Oregon State Bar for investigation of potential ethical violations; and
7. **REFER**, in the Court's discretion, the matter to the Marion County District Attorney's Office for investigation of suspected perjury based on the false sworn statements of Guy Keating and Sarah White; and
8. **GRANT** such other and further relief as the Court deems just and proper.

Date: February 13th, 2026

/s/ Adam Kobs

Adam E. Kobs, Pro Se
Residential address is confidential
Confidential Information Form (CIF) filed under UTCR 2.130
Email: adamkobs1984@proton.me

CERTIFICATE OF SERVICE UNDER UTCR 5.100

I, Adam E. Kobs, Plaintiff appearing pro se, certify under penalty of perjury:

On February 13th, 2026 I served the following documents:

- PLAINTIFF'S SUPPLEMENTAL MEMORANDUM DOCUMENTING COORDINATED PROCEDURAL MISCONDUCT IN SUPPORT OF MOTION FOR SANCTIONS

1. Service was made on all counsel of record via the following methods:

   a. **Electronic Mail (Email):** I served the document by email to the following counsel of record, who have previously consented to service by email under ORCP 9(G):

   - Guy E. Keating – gkeating@schulte-law.com
   - Rochelle Murphy – rmurphy@schulte-law.com
   - Matthew Smith – msmith@schulte-law.com
   - Tyler Honn – thonn@schulte-law.com

   b. **Oregon Odyssey File & Serve System:** I contemporaneously filed the document via the Odyssey File & Serve system, which provides electronic service to registered counsel.

2. This certificate of service complies with UTCR 5.100 and ORCP 9.

Date: February 13th, 2026

_____/s/ Adam Kobs_____

Adam E. Kobs, Pro Se
Residential address is confidential
Confidential Information Form (CIF) filed under UTCR 2.130
Email: adamkobs1984@proton.me